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 INDUSTRIES

**IN THE UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA**

KNEEPRO INDUSTRIES,  
 INCORPORATED dba KP  
 INDUSTRIES, a Michigan  
 Corporation,

Plaintiff,

vs.

TRUE SOURCE ENTERPRISES,  
 INC., a California Corporation;  
 DAVID PRATSON, an individual;  
 CLAUDIA ADRIAN ONORATO-  
 PRATSON, an individual, and DOES  
 1 through 50, Inclusive,

Defendants.

CASE NO. **'13CV0786 H BGS**

[Copyright/Trademark/Unfair  
 Competition]

**COMPLAINT FOR: 1) VIOLATION  
 OF FEDERAL LANHAM ACT  
 INCLUDING TRADEMARK  
 INFRINGEMENT; 2)  
 INFRINGEMENT OF COMMON  
 LAW TRADEMARK RIGHTS; 3)  
 UNFAIR COMPETITION; 4)  
 CONVERSION; 5) INDUCEMENT  
 OF BREACH OF CONTRACT; 6)  
 INTERFERENCE WITH  
 PROSPECTIVE ECONOMIC  
 ADVANTAGE; AND 7)  
 MISAPPROPRIATION OF TRADE  
 SECRETS; AND DEMAND FOR  
 JURY TRIAL**

Plaintiff, Knee Pro Industries, Incorporated, at times also known as and  
 doing business as KP Industries ("KP"), respectfully submits this complaint and  
 the following allegations.

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**COMMON ALLEGATIONS, JURISDICTION AND VENUE**

1. KP is a Michigan corporation with its principal place of business at 14534 Bluff Rd., Traverse City, Michigan 49686.
2. Defendant True Source Enterprises, Inc. ("True Source") is a California corporation with its principal place of business at 7607 Rancho Amigos Rd., Bonsall, CA 92003.
3. Defendant David Pratson ("Pratson") is an individual residing in Bonsall, California, and on information and belief, he is an owner, officer and/or employee of True Source. (Allegations stated in this complaint on information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery). For a number of years, Pratson was an employee of KP.
4. Defendant Claudia Adrian Onorato-Pratson ("Onorato") is an individual residing in Bonsall, California, and she is married to Pratson. On information and belief, Onorato is also an owner, officer and/or employee of True Source. For a number of years, Onorato was an employee of KP.
5. This action arises under the Lanham Act, U.S.C. Title 15, Section 43 (a) (15 U.S.C. § 1125). This court has original jurisdiction under 15 U.S.C.A. §§1121, and 28 U.S.C.A. §1338 in that this case arises under the Trademark Laws of the United States, 15 U.S.C.A. §§ 1051 et seq., including without limitation §§ 1116 and 1117.
6. Plaintiff has no knowledge of the true names and capacities of the defendants sued herein as Does 1-50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities when they are ascertained.
7. Plaintiff alleges on information and belief that at all times mentioned, each of the defendants was authorized and empowered by each of the other defendants to act as the agent of each of the remaining defendants; each

1 and all of things alleged have been done by them within the capacity and  
 2 authorization of ,and as agents for, the other Defendants.

3 **COUNT ONE**  
 4 **FEDERAL LANHAM ACT VIOLATIONS,**  
**INCLUDING TRADEMARK INFRINGEMENT**

- 5 8. KP is in the business of manufacturing and distributing a unique and  
 6 proprietary line of knee pads and accessories, including without limitation  
 7 products sold under the brand names The Knee Pro™ Ultra Flex III™,  
 8 Ultra Flex II™ and the VFR foam rubber pad (“KP Knee Pads”).
- 9 9. The configuration of certain KP Knee Pads, including without limitation  
 10 the Ultra Flex III™, has served as a trademark in interstate commerce  
 11 within the United States for knee pads since at least as early as October,  
 12 1995. On or about March 23, 2006, KP applied for the registration on the  
 13 principal register of plaintiff’s configuration trademark with the United  
 14 States Patent and Trademark Office, and on or about January 6, 2009,  
 15 plaintiff’s configuration trademark was registered, number 3,557,583  
 16 (referred to in this Complaint as the “Configuration Mark”). That  
 17 registration is still valid, with KP having met all maintenance and renewal  
 18 requirements. A true and correct copy of the registration certificate is  
 19 attached as Exhibit A. The registration and trademark were validly  
 20 assigned from Knee-Pro Industries, Inc., a California corporation, to  
 21 plaintiff, and that assignment has been recorded with the U.S. Patent and  
 22 Trademark Office.
- 23 10. KP Knee Pads include distinctive trade dress, including without limitation:  
 24 knee pads with a pair of hinged plastic shells with a distinctive, prominent  
 25 pad on the outside of the lower shell; the color of the knee pad shells and  
 26 prominent pad; and the packaging of the knee pad.
- 27 11. Since at least October 1995, KP has used the trade dress, Configuration  
 28 Mark and overall appearance of its KP Knee Pads to identify its goods and

1 distinguish them from the goods of competitors. KP has displayed the KP  
2 Knee Pads appearance, trade dress and Configuration Mark on KP's  
3 products, marketing material, sales materials, advertisements and media  
4 accounts throughout the United States, such that the overall appearance,  
5 associated trade dress and Configuration Mark have become an indication  
6 of KP Knee Pads' origin and guaranty of quality.

7 12. Defendants, including without limitation True Source, Pratson and  
8 Onorato, have infringed on KP's Configuration Mark, proprietary  
9 appearance and trade dress rights in interstate commerce by various acts,  
10 including without limitation by marketing, making, distributing and/or  
11 selling knee pads (including without limitation defendants' True Flex  
12 Knee Pad, True Flex Short Face and True Flex with Gel Insert) which are  
13 confusingly similar in configuration, appearance and/or trade dress to that  
14 of the KP Knee Pads and the Configuration Mark. True and accurate  
15 copies of some of defendants' marketing material setting forth some of  
16 defendants' infringing products are attached as Exhibit "B".

17 13. Defendants' infringing knee pads are likely to cause confusion and mistake  
18 by consumers, and to deceive consumers, as to the source of defendants'  
19 products and KP's products, and/or as to whether there is an affiliation,  
20 connection, sponsorship and/or product approval between defendants and  
21 KP.

22 14. KP did not authorize, agree to or permit defendants' sale of knee pads with  
23 a configuration, appearance and/or trade dress confusingly similar to that  
24 of KP Knee Pads and the Configuration Mark.

25 15. Plaintiff alleges on information and belief that defendants intentionally  
26 copied the trade dress, appearance and/or configuration of the KP Knee  
27 Pads to cause confusion, mistake and to deceive consumers in the  
28 marketplace, and to unfairly use and profit from KP's reputation and good

1 will associated with its products. Consumers have actually confused  
2 defendants' products with KP's products, including KP products  
3 displaying the Configuration Mark.

4 16. Defendants, including without limitation True Source, Pratson and  
5 Onorato, in connection with plaintiff's products and services, and in  
6 connection with defendants' products and services, have made and used  
7 false designations of origin, misleading descriptions of fact, and false and  
8 misleading representations of fact which are likely to cause confusion, or  
9 to cause mistake, or to deceive, as to the affiliation, connection,  
10 sponsorship, or approval of plaintiff's products and services and  
11 defendants' products and services, and as to the respective commercial  
12 activities of plaintiff and defendants.

13 17. Defendants, in advertising and promoting their own products, have  
14 misrepresented the nature, characteristics, qualities, and origin of  
15 defendants' and plaintiff's products and the parties respective commercial  
16 activities.

17 18. As former employees of KP, defendants knew of KP's Configuration  
18 Mark, and that it was registered with the U.S. Patent and Trademark  
19 Office. In any event, KP has demanded that defendants cease and desist  
20 from its various wrongful acts, providing defendants with actual notice of  
21 plaintiff's Configuration Mark registration, but defendants continue their  
22 unlawful acts.

23 19. By the above-alleged acts defendants have violated §43(a) of the Lanham  
24 Act, 15 U.S.C. §1125(a), and will continue to do so unless enjoined by the  
25 Court.

26 20. By reason of defendants' acts as alleged, plaintiff has suffered and will  
27 suffer: damage to its business, reputation and goodwill; and the loss of  
28 sales and profits plaintiff would have made but for defendants' acts, and



1 loss of property. Furthermore, defendants have been and will be unjustly  
 2 enriched by their wrongful conduct as alleged.

3 21. Defendants continue to do the acts complained of, and unless restrained  
 4 and enjoined, will continue to do so, all to plaintiff's irreparable damage.  
 5 It would be difficult to ascertain the amount of compensation which could  
 6 afford plaintiff adequate relief for such continuing acts, and a multiplicity  
 7 of judicial proceedings would be required. Plaintiff's remedy at law is  
 8 not adequate to compensate it for injuries threatened.

9 **COUNT TWO**  
 10 **INFRINGEMENT OF COMMON LAW TRADEMARK RIGHTS**

11 22. Plaintiff hereby re-alleges, as if fully set forth, the allegations of  
 12 paragraphs 1 through 21.

13 23. The Court has jurisdiction of this claim under the provisions of 28  
 14 U.S.C.S. §1338(b) in that the claim is joined with substantial and related  
 15 claims under the Trademark Laws (U.S.C. Title 15) of the United States  
 16 and based on a common nucleus of operative facts.

17 24. Defendants have infringed plaintiff's trade dress and Configuration Mark  
 18 with the intent to deceive the public into believing that the goods sold by  
 19 defendant are made by, approved by, sponsored by or affiliated with  
 20 plaintiff. Defendant's acts as alleged were committed with the intent to  
 21 pass off and palm off defendants' goods as the goods of plaintiff, and with  
 22 the intent to deceive and defraud the public.

23 25. Defendants' acts constitute an infringement of plaintiff's common law  
 24 rights in its trade dress and Configuration Mark.

25 **COUNT THREE**  
 26 **CONVERSION**

27 26. Plaintiff hereby re-alleges, as if fully set forth, the allegations of  
 28 paragraphs 1 through 25.

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- 1 27. The Court has jurisdiction of the conversion claim herein under the  
2 provisions of 28 U.S.C.S. §1338(b)) in that the claim is joined with  
3 substantial and related claims under the Trademark Laws (U.S.C. Title 15)  
4 of the United States and based on a common nucleus of operative facts.
- 5 28. While Pratson and/or Onorato were employees of KP, and before and after  
6 2008, plaintiff was the sole owner and was in possession of originals and  
7 copies of: plaintiff's customer and distributor lists, information and data,  
8 including without limitation customer and distributor contact information;  
9 plaintiff's vendor and supplier lists, information and data, including  
10 without limitation vendor and supplier contact information; injection  
11 molds for KP products; drawings and other product design documents for  
12 KP products; and CAD drawings, data and electronic files for KP products  
13 (collectively referred to as the "Tangible Goods").
- 14 29. On information and belief, at some unknown time, defendants, including  
15 without limitation True Source, Pratson and Onorato, wrongfully took  
16 possession of the Tangible Goods and converted them to their own use.
- 17 30. On information and belief, defendants intentionally and/or fraudulently  
18 took possession of the Tangible Goods with the intent to use the Tangible  
19 Goods for defendants' owner purposes to the detriment of KP.
- 20 31. By the above-mentioned acts, defendants have caused plaintiff to loss of  
21 possession of the Tangible Goods and monetary damages.

22 **COUNT FOUR**  
23 **INDUCEMENT OF BREACH OF CONTRACT**

- 24 32. Plaintiff hereby re-alleges, as if fully set forth, the allegations of  
25 paragraphs 1 through 25.
- 26 33. The Court has jurisdiction of this claim under the provisions of 28  
27 U.S.C.S. §1338(b)) in that said claims are joined with a substantial and  
28 related claim under the Trademark Laws (U.S.C. Title 15) of the United

- 1 States and based on a common nucleus of operative facts.
- 2 34. While Pratson and/or Onorato were employees of KP, and before and after  
3 2008, KP had entered into valid contracts with service and product  
4 suppliers concerning the development, design, manufacture and production  
5 of KP products, including KP Knee Pads. One such contract with a  
6 manufacturer of KP products included an agreement by which that  
7 manufacturer would: a) not make similar products for others; and b) not  
8 use KP's drawings, designs, molds, manufacturing methods or other  
9 materials for any purpose other than making products for KP. Another  
10 such contract with a product designer and mold maker included an  
11 agreement by which that designer/mold maker would: a) not make similar  
12 product designs, drawings or molds for others; and b) not use KP's  
13 designs, drawings, molds or other materials for any purpose other than for  
14 KP.
- 15 35. Defendants, including including without limitation True Source, Pratson  
16 and Onorato, knew of the existence of these contracts.
- 17 36. On information and belief, Defendants, including without limitation True  
18 Source, Pratson and Onorato, intentionally engaged in acts or conduct  
19 intending to induce the contracting third parties to breach their contracts  
20 with KP, including without limitation by: a) inducing the manufacturer of  
21 KP products to make similar products for defendants and/or to use KP's  
22 designs, drawings, molds, manufacturing methods or other materials to  
23 make products for defendants; and b) inducing the product designer and  
24 mold maker to make product designs, drawings or molds for the  
25 defendants and/or to use KP's designs, drawings, molds or other materials  
26 to make products for defendants.
- 27 37. The third parties contracting with KP then breached their agreements with  
28 KP, including without limitation by: a) the manufacturer of KP Knee pads



1 making similar products for defendants and/or using KP's designs,  
 2 drawings, molds, manufacturing methods and/or other materials to make  
 3 products for defendants; and b) the product designer and mold maker  
 4 making product designs, drawings or molds for the defendants and/or  
 5 using KP's designs, drawings, molds or other materials to make products  
 6 for defendants.

7 38. Defendants' alleged acts and conduct in inducing the breach of these  
 8 contracts has caused damage to KP, including monetary damage and the  
 9 financial loss of the benefit of these contracts.

10 **COUNT FIVE**  
 11 **INTENTIONAL AND NEGLIGENT INTERFERENCE**  
**WITH PROSPECTIVE ECONOMIC ADVANTAGE**

12 39. Plaintiff hereby re-alleges, as if fully set forth, the allegations of  
 13 paragraphs 1 through 25 and 33 to 38.

14 40. The Court has jurisdiction of this claim under the provisions of 28  
 15 U.S.C.S. §1338(b) in that the claim is joined with substantial and related  
 16 claims under the Trademark Laws (U.S.C. Title 15) of the United States  
 17 and based on a common nucleus of operative facts.

18 41. An economic relationship existed between KP and each of the alleged  
 19 contracting third parties, each containing a probable future economic  
 20 benefit and/or advantage to KP.

21 42. Defendants knew of the existence of each of these relationships.

22 43. The defendants intentionally engaged in these acts or conduct which were  
 23 designed to interfere with or disrupt each of these relationships.

24 44. Alternatively, defendants negligently engaged in these acts or conduct  
 25 without due care that defendants' actions would interfere with or disrupt  
 26 each of these relationships.

27 45. Each economic relationship was actually interfered with or disrupted,  
 28 causing damage to KP, including monetary damage and financial loss of

1 the benefit of those relationships.

2 46. By the above-mentioned acts defendants have caused plaintiff loss of  
3 prospective business interests and will continue to do so unless enjoined  
4 by this Court.

5 **COUNT SIX**  
6 **MISAPPROPRIATION OF TRADE SECRETS**

7 47. Plaintiff hereby re-alleges, as if fully set forth, the allegations of  
8 paragraphs 1 through 25.

9 48. The Court has jurisdiction of this claim under the provisions of 28  
10 U.S.C.S. §1338(b) in that the claim is joined with substantial and related  
11 claims under the Trademark Laws (U.S.C. Title 15) of the United States  
12 and based on a common nucleus of operative facts.

13 49. As part of its business, KP has generated various confidential trade secrets,  
14 confidential information and proprietary information which are the  
15 property of KP, including without limitation: product production cost and  
16 wholesale pricing information and data; marketing and distribution  
17 information and plans; customer and distributor lists, information and data,  
18 including without limitation a collection of customer and distributor  
19 contact information, relevant commercial needs and capabilities; plaintiff's  
20 vendor and supplier lists, information and data, including without  
21 limitation a collection of vendor and supplier contact information and their  
22 commercial needs, capacities and capabilities; and KP product  
23 manufacturing plans, designs and methods (collectively referred to as "KP  
24 Trade Secrets").

25 50. KP has taken reasonable steps to protect the confidentiality of KP Trade  
26 Secrets, including without limitation: restricting access to KP Trade  
27 Secrets; restricting access to KP's premises and property; informing  
28 employees, officers and directors that KP Trade Secrets are confidential

1 and must remain confidential; and not disclosing the KP Trade Secrets  
2 publicly or outside confidential circumstances.

3 51. The KP Trade Secrets derive actual and/or potential independent economic  
4 value from not being generally known to the public or to competitors of  
5 KP, including without limitation because competitors do not know: which  
6 customers and distributors regularly purchase knee pads and accessories;  
7 the particular needs and economic capacity of customers and distributors;  
8 the best sources of manufactured knee pads, including the best materials,  
9 components and manufacturing methods; the best source for knee pad  
10 designs, drawings and molds; KP's production costs and wholesale prices  
11 to be able to price competing products in a targeted manner; KP's  
12 manufacturing methods developed to best and most efficiently product  
13 quality products; and KP's marketing and distribution activities and plans  
14 to best compete with KP in various targeted markets.

15 52. Defendants, including without limitation Pratson and Onorato, during their  
16 employment with KP, acquired knowledge of KP Trade Secrets.

17 53. Pratson and Onorato are principal owners, officers and/or employees of  
18 True Source, which is now a competitor of KP.

19 54. On information and belief, defendants, including without limitation True  
20 Source, Pratson and Onorato, have wrongfully and illegally obtained, used  
21 and/or disclosed KP Trade Secrets, including to compete with KP,  
22 providing defendants with an unfair, wrongful and/or illegal competitive  
23 advantage. This misappropriation and use of KP Trade Secrets includes  
24 without limitation: using KP's product production cost and wholesale  
25 pricing information to target particular markets and customers with  
26 targeted, reduced pricing; using KP's marketing and distribution  
27 information and plans to target particular markets, distributors and/or  
28 customers; using KP's customer and distributor lists, information and data

1 to contact KP customers and distributors to sell them competing products;  
2 and using KP's vendor and supplier lists, information, capabilities and data  
3 to less expensively develop, design and manufacture quality knee pad  
4 products, using vendors who have knowledge of KP's product  
5 manufacturing plans, designs and methods.

6 55. Defendants have contacted KP's product manufacturer/supplier to make  
7 the same products for True Source, taking advantage of their confidential  
8 knowledge of IP Trade Secrets, and KP's product manufacturer/supplier  
9 has made and is making similar competing products for defendants. This  
10 has caused plaintiff to lose sales and the exclusive knowledge of  
11 information that gave plaintiff valuable competitive advantages on the  
12 market place.

13 56. Plaintiff alleges on information and belief: defendants misappropriated the  
14 KP Trade Secrets with malice, oppression and/or fraud with the meaning  
15 of California Civil Code Section 3264 in that defendants deliberately  
16 misappropriated the KP Trade Secrets with the intent to injure KP's  
17 business and improve defendants' business, profits and/or competitive  
18 advantage; defendants have deliberately caused and intended to cause  
19 great economic harm to KP with full knowledge of the wrongfulness of  
20 defendants' conduct; defendants conduct as alleged above was despicable,  
21 was carried on with a willful and conscious disregard of plaintiff's rights,  
22 and subjected plaintiff to unjust hardship. Plaintiff should therefore be  
23 awarded punitive and exemplary damages sufficient to punish defendants  
24 for engaging in this conduct to deter similar conduct in the future.

25 57. By reason of defendants' alleged acts, plaintiff has suffered and will suffer  
26 damage to its business, reputation and goodwill, including the loss of sales  
27 and profits plaintiff would have made but for defendants' acts.

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58. Furthermore, defendants have been and will be unjustly enriched by their wrongful conduct. Defendants continue to do the acts complained of, and unless restrained and enjoined, will continue to do so, all to plaintiff's irreparable damage. It would be difficult to ascertain the amount of compensation which could afford plaintiff adequate relief for such continuing acts, and a multiplicity of judicial proceedings would be required. Plaintiff's remedy at law is not adequate to compensate it for injuries threatened.

59. By these acts, defendants have willfully misappropriated the KP Trade Secrets to their own advantage in violation of common law and California Civil Code Section 3426 et seq.

**COUNT SEVEN**  
**STATE UNFAIR COMPETITION**

60. Plaintiff hereby re-alleges, as if fully set forth, the allegations of paragraphs 1 through 59.

61. The Court has jurisdiction of this unfair competition claim herein under the provisions of 28 U.S.C.S. §1338(b) in that the claim is joined with substantial and related claims under the Trademark Laws (U.S.C. Title 15) of the United States and based on a common nucleus of operative facts.

62. By the above-mentioned acts, defendants have violated California Business and Professional Code (Cal B&P §17200 et seq.) including without limitation California Business and Professional Code §17206 regarding unfair competition, § 17500 relative to falsity and misrepresentations, and § 17508 relative to claims and comparison with other brands.

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**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays:

1. That this Court grant a temporary restraining order, preliminary injunction and/or a permanent injunction pursuant to the powers granted it under 15 U.S.C.S §1116, enjoining and restraining defendants and their agents, servants and employees from directly or indirectly making false or misleading descriptions of fact, or false or misleading representation of fact concerning plaintiff's business, and products or defendant's business and products.
2. That this Court grant a temporary restraining order, preliminary injunction and/or a permanent injunction enjoining and restraining defendants and their agents, servants and employees from directly or indirectly making products with any confusingly similar appearance, trade dress and configuration with that of KP products.
3. That this Court grant a temporary restraining order, preliminary injunction and/or a permanent injunction enjoining and restraining defendants and their agents, servants and employees from directly or indirectly violating the Federal Lanham Act as to plaintiff, and from committing acts of unfair competition, conversion, inducement of breach of contract, interference with prospective economic advantage and misappropriation of trade secrets as alleged, including without limitation enjoining defendants from using and/or disclosing any and all KP Trade Secrets.
4. That this Court order defendants to return any and all KP Tangible Goods to KP;
5. That this Court, pursuant to the power granted it under 15 U.S.C.S. §1118, order that all labels, signs, prints, packages, wrappers, receptacles, products and advertisements in the possession of defendants bearing false or misleading information, sign or symbol, and all plates, molds, matrices

- 1 and other means of making the same, shall be delivered up and destroyed.
- 2 6. That defendants be required to account to plaintiff for any and all profits
- 3 derived by defendants from the sale of its goods and for all damages
- 4 sustained by plaintiff by reason of said acts of infringement, unfair
- 5 competition, conversion, inducement of breach of contract, interference
- 6 with prospective economic advantage, and misappropriation of trade
- 7 secrets.
- 8 7. That the Court award plaintiff compensatory and/or special damages, or
- 9 alternatively award plaintiff the amount of defendants' unjust enrichment.
- 10 8. That the Court award plaintiff treble the amount of actual damages
- 11 suffered by plaintiff.
- 12 9. That the Court award plaintiff reasonable punitive damages.
- 13 10. That costs of this action be awarded plaintiff.
- 14 11. That plaintiff be awarded its reasonable attorney fees.
- 15 12. That the Court grant such other and further relief as it shall deem just.

16 **JURY DEMAND**

17 Plaintiff requests a trial by jury of all claims that may be so tried.

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19 Dated: April 1, 2013

**CHARMASSON, BUCHACA & LEACH, LLP**

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21 By: \_\_\_\_\_

22 Rob G. Leach  
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23 INDUSTRIES, INC. dba KP INDUSTRIES

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